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September 27, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW B-204  
Washington, D.C. 20554

Re: *Ex Parte in CC Docket No. 01-194: Application of SBC Pursuant to  
Section 271 of the Telecommunications Act of 1996 to Provide InterLATA  
Service in Arkansas and Missouri*

Dear Ms. Salas:

On September 26, 2001, WorldCom met with Common Carrier Bureau Staff to discuss SBC's compliance with the section 271 checklist for Missouri and Arkansas. Staff requested that WorldCom file a letter explaining the issues that it has identified regarding resale of advanced services and SBC-ASI's advanced services tariff.

SBC-ASI's Advanced Services tariff, effective September 10, 2001, purports to contain the terms and conditions by which carriers and ISPs may obtain DSL services from SBC-ASI.<sup>1</sup> Because the tariff adversely impacts WorldCom's ability to serve its customers, WorldCom has requested an investigation of the tariff, which governs access to SBC's DSL services throughout its entire 13-state region.<sup>2</sup> One issue that WorldCom has identified in its request for investigation is the fact that the tariff does not include wholesale rates consistent with the resale provisions of the Act. This issue directly impacts the Commission's consideration of whether SBC is in compliance with the section 271 checklist in Missouri and Arkansas.

SBC acknowledges in its Missouri/Arkansas Brief that it provides retail DSL transport to business customers. Brief at p. 53. SBC explains that it provides such services through Customer Service Contracts to any "similarly situated" customer that meets the terms and conditions of that particular arrangement. *Id.* In support, SBC includes an interconnection agreement between Logix Communications Company and

<sup>1</sup> The tariff expressly states that only non-affiliated customer contracts and agreements executed before September 10, 2001 are grandfathered. SBC-ASI Tariff F.C.C. No. 1, section 2.11.1. WorldCom does not have an existing agreement in place with SBC-ASI to obtain DSL services, therefore it appears that our only option is to order DSL service out of the tariff. Moreover, WorldCom was in the middle of negotiating an agreement with SBC-ASI when SBC-ASI filed its tariff without notice to WorldCom.

<sup>2</sup> See attached letter from Robert Lopardo, Director of Federal Advocacy for WorldCom, to Dorothy Attwood, Chief of FCC's Common Carrier Bureau, dated September 19, 2001.

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SBC Advanced Solutions, Inc., which states that the “Agreement is intended to satisfy SBC’s obligations under section 251(c) of the Act as interpreted by the D.C. Circuit Court of Appeals in *Association of Communications Enterprises v. FCC*,” 235 F.3d 662 (D.C. Cir. 2001). The Agreement states:

SBC-ASI will make available to CLEC for resale at the wholesale discount rate shown herein new Customer Service Contracts (“CSC”) that SBC-ASI sells to retail customers. CLEC may resell new CSCs only to customers similarly situated to SBC-ASI’s retail CSC customer.<sup>3</sup>

Services are subject to resale under this Agreement only where such Services have been deployed by SBC-ASI and only where there is existing capacity on SBC-ASI’s deployed facilities to provide the Services.<sup>4</sup>

The Logix Agreement provides for an interim avoided cost resale discount of 19.2% in Missouri, which is subject to true up when the Missouri PSC adopts a permanent avoided cost discount rate.<sup>5</sup>

While the Logix Agreement provides for an interim avoided cost resale discount of 19.2%, the tariff does not include any resale discounts. In fact, the tariff does not mention that resale is even available to carriers. In addition, as explained above, the tariff states that only agreements executed before September 10, 2001 remain in effect. Thus, if WorldCom wanted to purchase DSL transport from SBC-ASI to provide DSL access to a business in Missouri, it apparently would not receive the 19.2% avoided cost resale discount, even though SBC-ASI sells the same service directly to businesses. The absence of a resale discount in the tariff, which purports to govern SBC-ASI’s entire DSL offering, violates section 251(c)(4) of the Act.

The contract language in the Logix Agreement also raises issues regarding SBC-ASI’s compliance with the resale provisions of the Act and the *ASCENT* decision. As AT&T pointed out in its comments, SBC’s highly restricted offer of wholesale DSL fails to comply with the requirements of Section 251(c) of the Act.<sup>6</sup> The Logix Agreement states that SBC-ASI will only offer DSL transport at resale to “similarly situated” customers, yet neither the Agreement nor SBC’s 271 application include a definition of “similarly situated.” Moreover, the Agreement also seeks to restrict the purchase of DSL transport “only where there is existing capacity on SBC-ASI’s deployed facilities to provide the service.”<sup>7</sup> These terms, among others, are unreasonable restrictions on resale of telecommunications services.

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<sup>3</sup> ASI-Logix Agreement – MO § 11G.

<sup>4</sup> ASI-Logix Agreement – MO § 11H.

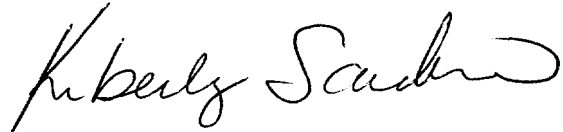
<sup>5</sup> ASI-Logix Agreement – MO § 11F(3).

<sup>6</sup> Comments of AT&T, CC Docket No 01-194, dated September 10, 2001, at pp. 67-68.

<sup>7</sup> ASI-Logix Agreement – MO § 11H.

Section 251(c)(4) of the Act requires SBC “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.” First, SBC-ASI’s tariff does not offer for resale at wholesale rates the DSL transport service that it provides to businesses. Second, the Logix Agreement, which is SBC’s offer of proof that it provides carriers with resale of the DSL services that it sells at retail to business customers, restricts the availability of resale to a certain set of undefined customers.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly Scardino". The signature is fluid and cursive, with a large, sweeping "K" and a long, horizontal flourish at the end.

Kimberly Scardino

Enclosure

cc: Scott Bergmann  
Bill Dever  
Rich Lerner  
Ben Childers  
Gail Cohen  
Kimberly Cook  
Claudia Pabo  
Uzoma Onyeije  
Rhonda Lien  
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Robert Lopardo  
Director  
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September 19, 2001

Dorothy Attwood  
Chief, Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: SBC-ASI Advanced Services Tariff Filing (FCC Tariff No. 1)

Dear Ms. Attwood:

WorldCom is writing to request an investigation of SBC-ASI's Advanced Services Tariff, effective September 10, 2001. The rates, terms and conditions contained in SBC's Advanced Services tariff, which govern access to SBC's DSL services throughout its entire 13-state region, directly impact WorldCom's ability to serve our customers. WorldCom urges the Commission to issue an order commencing an investigation into SBC's Advanced Services Tariff.

WorldCom has been negotiating a General Services Agreement with SBC for access to its DSL services.<sup>1</sup> Without notice to WorldCom, SBC filed its tariff with the Commission and presumably terminated negotiations with WorldCom. The tariff, which was approved by the Common Carrier Bureau on September 7, 2001, includes terms and conditions that impede WorldCom's ability to offer DSL services to end-users. For example, the tariff allows SBC to place other applications over the DSL line that WorldCom is accessing, and such applications, acknowledges SBC, may limit the bandwidth available for the service that WorldCom is seeking to provide to the customer.<sup>2</sup> Moreover, although SBC's network is capable of supporting a range of quality of service levels,<sup>3</sup> SBC is only offering a "best efforts" type of DSL service, which is the lowest quality of service.<sup>4</sup> In addition, the service is restricted to line sharing arrangements with SBC's voice service.

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<sup>1</sup> During negotiations, SBC provided WorldCom with contract language that included terms and conditions that are not in the tariff.

<sup>2</sup> See Sections 6.2.1 and 6.2.4 of SBC-ASI tariff.

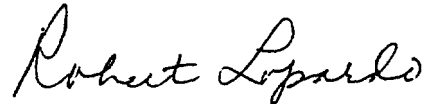
<sup>3</sup> See Section 4.2.5 of SBC-ASI tariff listing the different quality of service levels ranging from Constant Bit Rate (highest) to Unspecified Bit Rate (lowest).

<sup>4</sup> See Section 6.2.5 of SBC-ASI tariff ("Company only provides UBR Service.")

Like the terms and conditions contained in the tariff, the pricing of SBC's DSL service has not been investigated by the Commission. Although SBC acknowledges in its Missouri/Arkansas long distance application that it provides retail DSL transport to business customers,<sup>5</sup> its tariff does not include wholesale rates consistent with the resale provisions of the Act and the Commission's rules. In addition, in its MO/AR comments, WorldCom raised issues relating to the availability for resale of SBC's advanced services.<sup>6</sup>

If the Commission allows SBC to continue to impose the rates, terms and conditions contained in its Advanced Services tariff, there will be minimal competitive access to advanced services in the 13-state SBC region. For these reasons, WorldCom requests that the Commission immediately initiate a swift investigation into SBC's Advanced Services tariff.

Respectfully submitted,



Robert C. Lopardo  
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cc: Jeff Carlisle  
Kyle Dixon  
Matthew Brill  
Sam Feder  
Jordan Goldstein  
Brent Olson  
Richard Lerner  
Aaron Goldschmidt  
Michelle Carey  
Scott Bergman  
Jane Jackson  
Judith Nietsche

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<sup>5</sup> SBC MO/AR Brief, CC Docket No. 01-194, dated August 20, 2001, at p. 53.

<sup>6</sup> See Comments of WorldCom on the Application by SBC Communications Inc. For Authorization to Provide In-Region InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194, dated September 10, 2001, at pp. 1-12.